



July 30, 2002

Ms. Larissa T. Roeder
Assistant District Attorney
County of Dallas
Frank Crowley Courts Building
133 N. Industrial Boulevard, L.B. 19
Dallas, Texas 75207-4399

OR2002-4160

Dear Ms. Roeder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166440.

The Dallas County District Attorney's office (the "district attorney") received a request for "complete access for review and photocopying of the State's entire file pertaining to its case against" a named juvenile. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we note that the submitted information contains a search warrant and accompanying affidavit. Section 18.01(b) of the Code of Criminal Procedure provides that a search warrant affidavit "is public information if executed, and the magistrate's clerk shall make a copy of the affidavit available for public inspection in the clerk's office during normal business hours." Therefore, if the search warrant was executed, the district attorney must release the search warrant affidavit. See *Houston Chronicle Publ'g Co. v. Woods*, 949 S.W.2d 492, 498-9 (Tex. App.-Beaumont 1997, orig. proceeding) (search warrant affidavit which is "public information" if executed is open to disclosure without exception); *Houston Chronicle Publ'g Co. v. Edwards*, 956 S.W.2d 813 (Tex. App.-Beaumont 1997, orig. proceeding). For the remainder of the submitted information, we will address your arguments against disclosure.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes, such as section 58.007 of the Family Code. Section 58.007 states in pertinent part:

(b) Except as provided by Article 15.27, Code of Criminal Procedure, the records and files of a juvenile court, a clerk of court, a juvenile probation department, or a *prosecuting attorney* relating to a child who is a party to a proceeding under [the Juvenile Justice Code] are open to inspection only by:

- (1) the judge, probation officers, and professional staff or consultants of the juvenile court;
- (2) a juvenile justice agency as that term is defined by Section 58.101;
- (3) an attorney for a party to the proceeding;
- (4) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or
- (5) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

Fam. Code § 58.007(b) (emphasis added). As you indicate that the named juvenile whose file is at issue in this request was a party to a proceeding under the Juvenile Justice Code, and as you further indicate that the requestor is not one of the persons or entities authorized to access this information, we conclude that the requested information is confidential pursuant to section 58.007(b) of the Family Code. The district attorney must therefore withhold the submitted information in its entirety under section 552.101 of the Government Code with the exception of the search warrant affidavit if the search warrant was executed, which must be released to the requestor. As we are able to make this determination, we need not address your other raised exceptions.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/jh

Ref: ID# 166440

Enc. Submitted documents

c: Mr. Kent Krause
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(w/o enclosures)